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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,281	02/25/2002	Ming-Cheng Wu	DP-300809	7095
7590	09/08/2004		EXAMINER	
VINCENT A. CICHOSZ DELPHI TECHNOLOGIES, INC. Legal Staff, Mail Code: 480-414-420 P.O. Box 5052 Troy, MI 48007-5052			JOHNSON, CHRISTINA A	
			ART UNIT	PAPER NUMBER
			1725	
			DATE MAILED: 09/08/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

S.C.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/084,281	WU ET AL.
Examiner	Art Unit	
Christina Ildebrando	1725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 17 June 2004.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-20 and 22-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20,22-31 and 33-35 is/are rejected.
- 7) Claim(s) 32 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-20, 22-25, 28, 30-31, and 33-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Wilhelm.

Wilhelm (US 3,607,728) discloses a catalytic composite of a porous carrier material, a Group VIII noble metal component, and a lead component (column 1, lines 5-15). Suitable Group VIII noble metal components include platinum (column 7, lines 5-10). Suitable support materials include alumina, titania, and zirconia (column 4, lines 50-60). The catalyst contains 0.01 to about 2 percent by weight of the Group VIII metal (column 4, lines 15-25). It is taught that the amount of the lead component is preferably sufficient to provide an atomic ratio of lead to noble metal of about 0.05:1 to about 0.9:1, preferably 0.1:1 to about 0.75:1 (column 8, lines 10-25), which meets the range instantly claimed. (The range recited in instant claim 1 yields a Pb/Pt atomic ratio of 0.02:1 to 0.25:1; the range recited in instant claim 4 yields a Pb/Pt atomic ratio of 0.08:1 to 0.15:1). A specific example of a suitable composition contains 0.375 wt% Pt and 0.1 wt% Pb which results in a Pb/Pt atomic ratio of 0.25 (column 8, lines 10-35).

With respect to process claims 12-19, 22-25, and 28: Wilhelm teaches that the catalyst composition is prepared by impregnating the carrier with aqueous solutions of

the Group VIII metal and lead (column 6, lines 55-60). The impregnation may be carried out sequentially, with the lead being impregnated before or after the impregnation of the Group VIII metal (column 6, lines 55-60). Following impregnation, the composite is dried and calcined (column 6, lines 64-65). The catalyst composition may be disposed in a fixed bed or moving bed system prior to use (column 10, lines 10-35). This is considered to meet the limitation "disposing said modified catalyst containing support on or into a substrate" required by instant claim 12.

With respect to claim 19, the drying and calcination step is considered to meet the heating step required by the instant claims. With respect to claim 23, the reference teaches that the catalyst may be prepared by the sequential impregnation of the carrier first with a metal of Group VIII (i.e. meets the formation of a support slurry) followed by impregnation with lead (i.e. meets the formation of a second slurry). It is taught that in order to ensure uniform distribution of the lead component on the carrier, that a volume ratio of impregnation solution to carrier material of at least 1.5:1, preferably 2:1 to 10:1, and to maintain the pH of the solution in the range of 1 to about 7 (column 6, lines 70-75), which meets the ranges required by claims 25 and 28.

With respect to the claim language "wherein the CO-selective catalyst is capable of preferentially removing carbon monoxide over hydrogen," this limitation has been regarded as a statement of intended use. While intended use recitations cannot entirely be disregarded, in composition and article claims, the intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention over the prior art. *In re Casey*, 370 USPQ

235 and *In re Otto*, 312 USPQ 458. It is the position of the examiner that the prior art structure is capable of performing the intended use and therefore meets the instant claims.

As each and every element of the claimed invention is taught in the prior art as recited above, the claims are anticipated by Wilhelm.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wilhelm et al. as applied above for claims 1-20, 22-25, and 28.

The teachings of Wilhelm are as described above for claims 1-20, 22-25, and 28.

Wilhelm teaches that the lead precursor may be lead nitrate (column 6, lines 50-60). The difference between the reference and the claims is that Wilhelm does not teach that the lead nitrate comprises about 60-65 wt% lead, based upon the weight of the lead contained in the modifying agent solution, as required by claim 27.

However, Wilhelm teaches a catalyst composition comprising an amount of lead which meets the amount of lead required by the instant claims. Further, Wilhelm teaches that the presence of lead is very beneficial to the catalyst (column 3, lines 15-20) and further that the ratio of lead to platinum must be controlled to obtain optimal

results (column 4, lines 15-25). Additionally, Wilhelm teaches that the volume of solution used to impregnate the composition has an effect upon the distribution of the lead within the final composite (column 8, lines 60-70). One of ordinary skill would recognize that the concentration of lead in the catalyst composite would be a function of the concentration of lead in the solution, which in turn would be a function of the volume of solution and the amount (by weight) of lead contained therein. Therefore, it is the position of the examiner Wilhelm recognizes the amount of lead contained to be a result effective variable. As such, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have optimized the amount of lead contained in the precursor solution in order to obtain the optimal amount of lead in the composition. It would have been obvious to one having ordinary skill in the art at the time the invention was made to choose the instantly claimed ranges through process optimization, since it has been held that there the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. See *In re Boesch*, 205 USPQ 215.

5. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wilhelm et al. as applied above for claims 1-20, 22-25, and 28, and further in view of Klein et al.

The teachings of Wilhelm are as described above for claims 1-20, 22-25, and 28.

The difference between the reference and the claims is that Wilhelm does not teach that the catalytic material solution comprises platinum nitrate, wherein said platinum nitrate comprises about 15 to about 19 wt% platinum, based on the weight of said platinum contained in said catalytic material solution, as required by claim 26.

Klein et al. (US 6,077,489) teaches a catalyst composition containing platinum and lead on a support material (column 2, lines 1-6). It is taught that precursors for platinum are known in the art and include platinum compounds such as hexachloroplatinic acid, platinum nitrate, and platinum chloride (column 2, lines 64-66).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the teachings of Wilhelm to include the use of platinum nitrate as the platinum precursor in light of teachings by Klein et al. The teachings of Klein et al. establish that platinum nitrate is an art recognized functional equivalent of the platinum precursors taught by Wilhelm. One of ordinary skill would have been motivated to substitute any known, functionally equivalent platinum precursor in the process of Wilhelm, with a reasonable expectation of success.

The modified disclosure of Wilhelm further does not teach the amount of platinum contained within the solution. However, Wilhelm teaches a catalyst composition comprising an amount of platinum which meets the amount of platinum required by the instant claims. Further, Wilhelm teaches that the presence of platinum is very beneficial to the catalyst (column 7, lines 5-20) and further that the ratio of lead to platinum must be controlled to obtain optimal results (column 4, lines 15-25). Additionally, Wilhelm teaches that the volume of solution used to impregnate the composition has an effect upon the distribution of the platinum within the final composite (column 8, lines 60-70). One of ordinary skill would recognize that the concentration of platinum in the catalyst composite would be a function of the concentration of platinum in the solution, which in turn would be a function of the volume of solution and the amount (by weight) of

platinum contained therein. Therefore, it is the position of the examiner Wilhelm recognizes the amount of platinum contained to be a result effective variable. As such, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have optimized the amount of platinum contained in the precursor solution in order to obtain the optimal amount of platinum in the composition. It would have been obvious to one having ordinary skill in the art at the time the invention was made to choose the instantly claimed ranges through process optimization, since it has been held that there the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. See *In re Boesch*, 205 USPQ 215.

6. Claims 1, 4-18, and 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abdo et al.

Abdo et al. (US 6,299,995) discloses a catalyst useful for the selective oxidation of carbon monoxide. The catalyst composition comprises 0.5 to 5 wt%, preferably 1 to 3 wt%, ruthenium, supported on a porous carrier (column 5, lines 35-60). Suitable carriers include alumina, titania, and zirconia (column 6, lines 1-25). It is taught that ruthenium is supported on the catalyst support by impregnation (column 8, lines 40-65). Abdo et al. teaches that the catalyst composition may contain additional components which act to improve catalyst activity, selectivity, or stability, including antimony, arsenic, and bismuth (column 9, lines 25-35). The additional component may be added to the carrier material or to the catalytic composite at any point during its preparation (column 9, lines 35-40). It is taught that the catalyst is disposed in a reactor during use (see columns 11-

12) (considered to meet “disposing said modified catalyst containing support in or into a substrate” required by claim 12). Abdo et al. further teaches that the selective oxidation catalyst may be used in conjunction with a fuel cell system containing a reformer, the selective oxidation catalyst, and a fuel cell (column 12, claim 1).

The difference between the reference and the claims is that the reference does not disclose that the modifying agent is present in an amount of about 2 to 25 atomic percent as required by claims 1, 12, and 29, or the amount of modifying agent present, as required by claims 9-11 and 16-18.

However, the Abdo et al. reference teaches that the modifying agent serves to improve the catalyst activity, selectivity, and stability (column 9, lines 25-35). Therefore, it is the position of the examiner that the reference recognizes the amount of the modifying agent to be a result effective variable. It would have been obvious to one having ordinary skill in the art at the time the invention was made to choose the instantly claimed ranges through process optimization, since it has been held that there the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. See *In re Boesch*, 205 USPQ 215. In this case, one of ordinary skill would have been motivated to optimize the concentration of the modifying agent to arrive at the ranges instantly claimed in order to obtain a carbon monoxide selective catalyst having improved activity, selectivity, or stability.

With respect to the claim language “wherein the CO-selective catalyst is capable of preferentially removing carbon monoxide over hydrogen,” this limitation has been

regarded as a statement of intended use. While intended use recitations cannot entirely be disregarded, in composition and article claims, the intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention over the prior art. *In re Casey*, 370 USPQ 235 and *In re Otto*, 312 USPQ 458. It is the position of the examiner that the prior art structure is capable of performing the intended use and therefore meets the instant claims.

***Allowable Subject Matter***

7. Claim 32 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
8. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not teach or suggest a method for making a catalyst comprising a step of vaporizing the modifying agent and depositing the vaporized modifying agent onto the mixture, in combination with the other features instantly claimed.

***Response to Arguments***

9. Applicant's arguments filed June 17, 2004 have been fully considered but they are not persuasive.

With respect the rejection under 35 USC 102(b) over Wilhelm, applicant argues that the catalyst taught by Wilhelm is used in hydrotreating, i.e. hydrogen consuming processes, and fails to teach a CO selective catalyst comprising the instantly claimed Pt

and Pb components. This argument has been considered but is not persuasive. Wilhelm teaches a catalyst composition comprising lead and platinum in amounts which meet the instantly claimed amounts. With respect to the difference in intended use, while intended use recitations cannot entirely be disregarded, in composition and article claims, the intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention over the prior art. *In re Casey*, 370 USPQ 235 and *In re Otto*, 312 USPQ 458. It is the position of the examiner that the prior art structure is capable of performing the intended use and therefore meets the instant claims. Applicant has not provided any evidence that the difference in intended use leads to a structural difference between the instant catalyst and that taught by Wilhelm.

Further, with respect to the 103(a) rejection over Wilhelm in view of Klein et al., applicant argues that Klein et al. fails to cure the deficiency of Wilhelm, namely the amounts of modifying metal present in the catalytic material. Again, it is the position of the examiner that the Wilhelm reference would meet the claimed amounts of modifying metal present. Klein et al. is applied only for the teaching of the use of platinum nitrate.

Applicant further argues that Wilhelm does not teach that the amount of modifying metal is a “result effective variable” and that there is no recognition that the parameters of Wilhelm can be optimized to product a CO selective catalyst. However, it appears that applicant has mischaracterized the position of the examiner. The examiner has not proposed that the amount of lead in the catalyst is a result effective variable.

Rather, the examiner suggests that the amount of lead contained in the impregnating solution is a result effective variable, as suggested by Wilhelm.

With respect to the 103(a) rejection over Abdo et al., applicant argues that the amounts are not result effective variables that are merely optimized. However, Abdo teaches that the modifier would improve catalyst activity, selectivity and stability, which suggests that the amount of modifier would be a result effective variable. Applicant has failed to rebut the *prima facie* case of obviousness set forth by the examiner such as by showing some criticality to the claimed range. Applicant further argues that different catalysts are taught and claimed. However, Applicant has not provided any evidence to show that the catalysts are different. It is not clear in what respect applicant considers the catalysts to be different.

### ***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

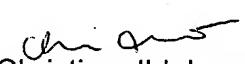
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christina Ildebrando whose telephone number is (571) 272-1176. The examiner can normally be reached on Monday-Friday, 7:30-5, with Alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Dunn can be reached on (571) 272-1171. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Christina Ildebrando  
Patent Examiner  
Art Unit 1725

9/1/04

CAI  
September 1, 2004